



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 14 2017

Mr. Charlie Denton  
Barnes and Thornburg  
171 Monroe Avenue N.W., Suite 1000  
Grand Rapids, Michigan 49503-2694

REPLY TO THE ATTENTION OF:

VIA E-MAIL: charles.denton@btlaw.com

Dear Mr. Denton:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Decorative Panels, Inc., docket no. CAA-05-2017-0028. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on

June 14, 2017.

Pursuant to paragraph 59 of the CAFO, Decorative Panels, Inc. must pay the civil penalty within 30 days of the filing date. The payment must display the case name and case docket number.

Please direct any questions regarding this case to Cathleen Martwick, Associate Regional Counsel, 312-886-7166.

Sincerely,

Natalie Topinka, Acting Chief  
Air Enforcement and Compliance Assurance Section (IL/TN)

Enclosure

cc: Ann Coyle, Regional Judicial Officer/C-14J  
Regional Hearing Clerk/E-19J  
Cathleen Martwick/C-14J  
Tom Hess, MDEQ (via e-mail)  
Shane Nixon, MDEQ (via e-mail)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No.</b>	<b>CAA-05-2017-0028</b>
	)		
<b>Decorative Panels International, Inc.</b>	)	<b>Proceeding to Assess a Civil Penalty</b>	
<b>Alpena, Michigan,</b>	)	<b>Under Section 113(d) of the Clean Air Act,</b>	
	)	<b>42 U.S.C. § 7413(d)</b>	
<b>Respondent.</b>	)		
_____	)		



**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the CAA), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), as codified at 40 C.F.R. Part 22.
2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondent is Decorative Panels International, Inc. (DPI), a Delaware corporation doing business in Michigan.
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.
6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO and its right to appeal this CAFO.

### **Statutory and Regulatory Background**

9. Under Section 112 of the CAA, U.S.C. § 7412, on July 30, 2004, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Plywood and Composite Wood Products (PCWP) at 40 C.F.R. Part 63, Subpart DDDD (69 Fed. Reg. 45983).

10. The NESHAP for PCWP applies to manufacturing facilities that manufacture hardboard and that are major sources of Hazardous Air Pollutants (HAP) 40 C.F.R. § 63.2231.

11. The NESHAP for PCWP, at 40 C.F.R. § 63.2232, applies to each new, reconstructed, or existing affected source at a PCWP manufacturing facility.

12. The NESHAP, at 40 C.F.R. § 63.2240(b), requires owners of an existing affected PCWP manufacturing facility that uses an emission control system to demonstrate that the resulting emissions meet the compliance options and operating requirements in Tables 1B and 2 to Subpart DDDD.

13. The NESHAP for PCWP, at 40 C.F.R. Part 63, Subpart DDDD, Table 1B, requires that for each process unit with an add-on control system the owner or operator must comply with one of the following six compliance options:

- a. Reduce emissions of total HAP, measured as total hydrocarbon (THC) (as carbon), by 90 percent; or

- b. Limit emissions of total HAP, measured as THC (as carbon), to 20 parts per million volume dry (ppmvd); or
- c. Reduce methanol emissions by 90 percent; or
- d. Limit methanol emissions to less than or equal to 1 ppmvd if uncontrolled methanol emissions entering the control device are greater than or equal to 10 ppmvd; or
- e. Reduce formaldehyde emissions by 90 percent; or
- f. Limit formaldehyde emissions to less than or equal to 1 ppmvd if uncontrolled formaldehyde emissions entering the control device are greater than or equal to 10 ppmvd.

14. The NESHAP for PCWP, at 40 C.F.R. Part 63, Subpart DDDD, Table 2, requires that for each biofilter, the owner or operator must either maintain the 24-hour block biofilter bed temperature within the range established according to §63.2262(m); or maintain the 24-hour block average THC concentration in the biofilter exhaust below the maximum concentration established during the performance test. Section 63.2262(m) describes the establishment of biofilter operating requirements.

15. The NESHAP for PCWP, at 40 C.F.R. Part 63, Subpart DDDD, Table 2, requires, requires that for each catalytic oxidizer, the owner or operator must either maintain the 3-hour block average catalytic oxidizer temperature above the minimum temperature established during the performance test and check the activity level of a representative sample of the catalyst at least every 12 months; or maintain the 3-hour block average THC concentration in the catalytic oxidizer exhaust below the maximum concentration established during the performance test. Section 63.2262(l) describes the establishment of catalytic oxidizer operating requirements.

16. The NESHAP for PCWP, at 40 C.F.R. Part 63, Subpart DDDD, Table 7, requires that for each process using a biofilter, the owner or operator must demonstrate continuous compliance with the compliance options and operating requirements of Table 1B to subpart DDDD by conducting a repeat performance test using the applicable method(s) specified in Table 4 to subpart DDDD within 2 years following the previous performance test.

17. The NESHAP for PCWP, at 40 C.F.R. § 63.2290 and Table 10 of Subpart DDDD, states that the NESHAP General Provisions at 40 C.F.R. § 63.6(e)(1-2) applies to Subpart DDDD.

18. The NESHAP for PCWP, at 40 C.F.R. § 63.2250(b), requires the owner or operator to operate and maintain its affected source, including air pollution control and monitoring equipment, according to the provisions in 40 C.F.R. § 63.6(e)(1)(i).

19. On March 16, 1994, EPA promulgated the General Provisions for the Part 63 NESHAP standards at 40 C.F.R. Part 63 Subpart A, § 63.1-63.15 (59 Fed. Reg. 12430).

20. The NESHAP, at 40 C.F.R. § 63.6(e)(1)(i), requires the owner or operator of an affected source to operate and maintain the affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions.

21. Title V of the CAA, 42 U.S.C. §§ 7661a-7661f, establishes an operating permit program for certain sources, including "major sources." Pursuant to Section 502(b) of the CAA, 42 U.S.C. § 7661a(b), on July 21, 1992, EPA promulgated regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. 57 Fed. Reg. 32295. These regulations are codified at 40 C.F.R. Part 70.

22. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), states that, after the effective date of any permit program approved or promulgated under Title V of the CAA, no source subject to Title V may operate the source except in compliance with its Title V permit.

23. 40 C.F.R. § 70.7(b) states that, no source subject to Title V may operate the source except in compliance with a Title V permit.

24. EPA granted full approval to the Michigan Title V operating permit program on December 4, 2001. 66 Fed. Reg. 62949. The program became effective on November 30, 2001.

25. On December 17, 2009, the Michigan Department of Natural Resources and Environment, now known as the Michigan Department of Environmental Quality (MDEQ), Air Quality Division (AQD) issued to DPI the Renewable Operating Permit (ROP) MI-ROP-B1476-2009b. This permit was revised on June 1, 2013 and was effective until December 17, 2014. However, if a timely and administratively complete application for renewal is submitted not more than 18 months, but not less than 6 months, before the expiration date of the ROP, but the department fails to take final action before the end of the ROP term, the existing ROP does not expire until the renewal is issued or denied.

26. On June 12, 2014, MDEQ received DPI's administratively complete renewal application for its Renewable Operating Permit (ROP). On December 21, 2015, MDEQ AQD issued to DPI the ROP MI-ROP-B1476-2015. This ROP is effective until December 21, 2020.

27. Permit MI-ROP-B1476-2009b states that DPI's No. 1 and No. 3 Presses, coolers, and associated equipment, and the Predryer and Bake Oven for the No. 3 press line are subject to the requirements of 40 C.F.R. Part 63, Subpart DDDD.

28. The Administrator of EPA (the Administrator) may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for CAA violations that occurred after

January 12, 2009 through December 6, 2013, \$37,500 per day of violation up to a total of \$320,000 for CAA violations that occurred after December 6, 2013 through November 2, 2015, and \$45,268 per day of violation up to a total of \$362,141 for violations that occurred after November 2, 2015 and assessed on or after January 15, 2017 under Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

29. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

30. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO:

#### **Factual Allegations and Alleged Violations**

31. At all times relevant to this CAFO, DPI owned and operated a plywood and composite wood products manufacturing facility at 416 Ford Avenue, Alpena, Michigan.

32. At all times relevant to this CAFO, DPI manufactured hardboard at the manufacturing facility.

33. At all times relevant to this CAFO, DPI owned and operated two reconstituted wood product presses, known as the No. 1 Press and the No. 3 Press at the manufacturing facility.

34. At all times relevant to this CAFO, DPI owned and operated a hardboard oven, known as the No. 3 Bake Oven.

35. The No. 1 Press, cooler, and associated equipment are identified in Permit MI-ROP-B1476-2009b as Emission Unit EUPRESS2S. Emissions from EUPRESS2S are controlled by the No. 1 Biofilter.

36. The No. 3 Press and cooler are identified in Permit MI-ROP-B1476-2009b as Emission Unit EU3PRESS-AREA. Emissions from EU3PRESS-AREA are controlled by the No. 3 Biofilter.

37. The No. 3 Bake Oven is identified in Permit MI-ROP-B-1476-2009b as Emission Unit EU3 BAKEOVEN. Emissions from EU3 BAKEOVEN are controlled by the Regenerative Catalytic Oxidizer (RCO).

38. DPI's manufacturing facility is an emission source subject to the requirements of the CAA, including 40 C.F.R. Part 63, Subpart DDDD.

39. DPI's manufacturing facility is located at a major source of HAP emissions as set forth at 40 C.F.R. § 63.2231.

40. DPI's No. 1 and No. 3 Presses and No. 3 Bake Oven are affected sources according to §63.2232(b).

41. On January 24, 2013, EPA Region 5 sent to DPI a Request for Information under Section 114 of the CAA. DPI received the request on February 4, 2013. On February 12, 2013, EPA sent a revised request.

42. DPI submitted a response to the January 24, 2013 Request for Information and associated revised request to EPA on March 5, 2013.

43. On December 17, 2013, EPA Region 5 sent to DPI another Request for Information under Section 114 of the CAA. DPI received the request on December 23, 2013.



44. DPI submitted a response to the December 17, 2013 Request for Information to EPA on January 17, 2014.

45. On May 29, 2013, DPI conducted compliance testing activities and discovered that the roof panels on the No. 3 Biofilter were leaking due to structural problems with the Biofilter top, which interfered with the proper performance of the Biofilter. DPI described these observations in a letter dated July 26, 2013, to Ms. Janis Denman of MDEQ.

46. In its July 26, 2013 letter to Ms. Janis Denman of MDEQ, DPI stated that it was unable to conduct performance testing on its No. 1 and No. 3 Biofilters within two years of its last performance tests conducted August 24-26, 2011 and July 26-28, 2011, respectively.

47. As stated above, DPI conducted performance testing of the No. 1 and No. 3 Biofilters for DDDD compliance on August 24-26, 2011 and July 26-28, 2011, respectively. These tests also established the operating temperature ranges of 73-87°F for the No. 1 Biofilter and 74-91°F for the No. 3 Biofilter.

48. Subsequently, DPI conducted performance testing on both the No. 1 and No. 3 Biofilters on September 17-18, 2015. Results of this testing established a new operating temperature range of 74-92°F for the No. 3 Biofilter for operations occurring on September 18, 2015 or after.

49. A performance test of the RCO conducted on December 7, 2011, established a minimum operating temperature of 818°F for the RCO.

50. On July 31, 2014, January 16, 2015, July 24, 2015, January 21, 2016, July 31, 2016, and January 20, 2017, DPI submitted to MDEQ its semi-annual MACT DDDD compliance reports for the prior 6-month period. In these reports, DPI reported dates of deviations from the established temperature ranges for the No. 1 and No. 3 Biofilters and for the

minimum temperature for the RCO. Additionally, DPI disclosed to EPA a high temperature range deviation for No. 1 Biofilter for February 5, 2017 and April 16, 2017.

51. For the 24-hour block averages/days detailed in Attachment A, the No. 1 Biofilter did not operate within the established temperature range of 73-87°F.

52. For the 24-hour block averages/days detailed in Attachment B, the No. 3 Biofilter did not operate within the established temperature range of 74-91°F (prior to September 18, 2015) or 74-92°F (September 18, 2015 and after)..

53. For the days detailed in Attachment C, the temperature of the RCO did not meet the established minimum temperature of 818°F for at least one three-hour block average during that day.

54. EPA alleges that by failing to maintain the minimum operating temperature for the RCO and failing to operate within the established temperature ranges for the No. 1 and No. 3 Biofilters, on the dates specified in Attachments A, B and C, DPI failed to demonstrate that its emissions met the compliance options and operating requirements at its No. 1 and No. 3 Presses and at its No. 3 Bake Oven in violation of 40 C.F.R. § 63.2240(b) and Permit MI-ROP-B1476-2009b, Flexible Group Conditions for FGMACTDDDD, III. 1 and 2 (Process/Operational Restriction(s)).

55. EPA alleges that by knowingly operating the No. 3 Biofilter with a leaking or collapsed roof panel from at least May 29, 2013 through at least November 3, 2013, DPI failed to operate EU3PRESS-AREA and the No. 3 Biofilter in a manner consistent with safety and good air pollution control practices for minimizing emissions, in violation of 40 C.F.R. §63.2250(b), 40 C.F.R. § 63.6(e)(1)(i) and R 336.1912.

56. EPA alleges that by failing to conduct repeat performance tests of its No. 1 and No. 3 Biofilters within two years of the previous performance tests, DPI is in violation of 40 C.F.R. § 63.2271(a), Table 7 of Subpart DDDD, and Permit MI-ROP-B1476-2009b, Flexible Group Conditions for FGMACTDDDD, IX.2 (Other Requirement(s)).

57. On April 1, 2014, EPA issued to Respondent a Finding of Violation (FOV) alleging that DPI violated the NESHAP for PCWP at 40 C.F.R. Part 63, Subpart DDDD. Respondent is contemporaneously signing an Administrative Consent Order (ACO) to be issued under Section 113(a) of the CAA.

#### **Civil Penalty**

58. Based on analysis of the factors specified in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), the facts of this case, DPI's compliance history and cooperation, Complainant has determined that an appropriate civil penalty to settle this action is \$140,000.

59. Within 30 days after the effective date of this CAFO, Respondent must pay a \$140,000 civil penalty by sending, via express mail or overnight delivery service, a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, Missouri 63101

The check must note Respondent's name and the docket number of this CAFO.

60. Respondent must send a notice of payment that states Respondent's name and the docket number of this CAFO to EPA at the following addresses when it pays the penalty:

Attn: Compliance Tracker (AE-18J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

77 W. Jackson Boulevard  
Chicago, Illinois 60604

Cathleen R. Martwick (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

Regional Hearing Clerk (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 W. Jackson Boulevard  
Chicago, Illinois 60604

61. This civil penalty is not deductible for federal tax purposes.

62. If Respondent does not pay timely the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty with interest, nonpayment penalties and the United States enforcement expenses for the collection action under Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

63. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys' fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

#### **General Provisions**

64. Consistent with the Standing Order Authorizing E-Mail Service of Orders and Other Documents Issued by the Regional Administrator or Regional Judicial Officer under the

Consolidated Rules, dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following e-mail addresses: martwick.cathleen@epa.gov (for Complainant), and charles.denton@btlaw.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

65. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in this CAFO.

66. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

67. This CAFO does not affect Respondent's responsibility to comply with the CAA and other applicable federal, state and local laws. Except as provided in paragraph 65, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

68. Respondent certifies that it is complying fully with 40 C.F.R. Part 63 Subpart DDDD.

69. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the CAA, 42 U.S.C. § 7413(e).

70. The terms of this CAFO bind Respondent, its successors and assigns.

71. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

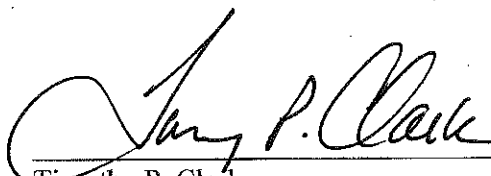
72. Each party agrees to bear its own costs and attorneys' fees in this action.

73. This CAFO constitutes the entire agreement between the parties.

**Decorative Panels International, Inc., Respondent**

31 May 2017

Date

A handwritten signature in black ink, reading "Timothy P. Clark". The signature is written in a cursive style with a large, looping initial "T".

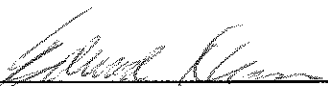
Timothy P. Clark

President and CEO

Decorative Panels International, Inc.

**United States Environmental Protection Agency, Complainant**

6/8/17  
Date

  
Edward Nam  
Director  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5

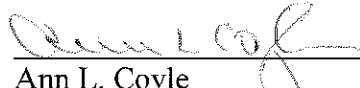
**Consent Agreement and Final Order**  
**In the Matter of: Decorative Panels International, Inc.**  
**Docket No. CAA-05-2017-0028**

**Final Order**

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

June 13, 2017

Date



Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5



## Attachment A

Dates on which the No. 1 Biofilter did not maintain a 24-hour block average temperature within the established temperature range of 73-87°F

1/3/2012
1/24/2012
2/9/2012
3/13/2013
3/14/2013
6/15/2013
7/31/2013
1/14/2015
2/24/2015
7/7/2015
7/8/2015
7/15/2015
8/25/2015
8/26/2015
9/5/2015
9/6/2015
9/7/2015
11/19/2015
11/20/2015
11/22/2015
1/6/2016
5/20/2016
6/29/2016
11/15/2016
2/5/2017
4/16/2017

## Attachment B

Dates on which the No. 3 Biofilter did not maintain a 24-hour block average temperature  
within the established temperature range of 74-91°F (prior to September 18, 2015)  
or 74-92°F (September 18, 2015 and after)

1/1/2012	8/14/2015
1/2/2012	8/16/2015
1/4/2012	8/17/2015
1/5/2012	8/20/2015
1/6/2012	9/5/2015
1/9/2012	9/6/2015
1/10/2012	9/7/2015
1/14/2012	9/8/2015
1/15/2012	11/15/2015
1/16/2012	11/16/2015
1/24/2012	1/10/2016
5/31/2012	3/10/2016
6/1/2012	4/5/2016
9/25/2012	7/24/2016
10/4/2013	8/3/2016
10/5/2013	8/4/2016
10/6/2013	8/11/2016
10/10/2013	8/15/2016
10/19/2013	8/16/2016
10/20/2013	9/7/2016
10/21/2013	12/16/2016
10/22/2013	
10/23/2013	
10/24/2013	
10/25/2013	
10/26/2013	
10/27/2013	
10/28/2013	
10/29/2013	
10/30/2013	
10/31/2013	
11/1/2013	
11/2/2013	
11/3/2013	

## Attachment C

Dates on which the RCO did not meet the established minimum temperature of 818°F  
for at least one three-hour block average

1/15/2012
1/17/2012
3/7/2012
3/11/2012
3/20/2012
3/16/2015

Consent Agreement and Final Order  
In the matter of: Decorative Panels International, Inc.  
Docket Number: CAA-05-2017-0028

**CERTIFICATE OF SERVICE**

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CAA-05-2017-0028, which was filed on 6/14/2017, in the following manner to the following addressees:

Copy by E-mail to Respondent: Tim Clark  
tim.clark@decpanels.com

Copy by E-mail to  
Attorney for Complainant: Cathleen Martwick  
martwick.cathleen@epa.gov

Copy by E-mail to  
Attorney for Respondent: Charlie Denton  
charles.denton@btlaw.com

Copy by E-mail to  
Regional Judicial Officer: Ann Coyle  
coyle.ann@epa.gov

Dated: June 14, 2017



LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5